

MEMORANDUM TO: Mayor and City Council

FROM: David B. Humpton, City Manager *DTJ*

DATE: August 31, 2006

SUBJECT: Day Laborer Site – City and State Ordinances

It was requested that staff provide the Mayor and City Council with a listing of ordinances which will relate to informal day laborer sites. The City Attorney, Senior Police Staff, and other staff who have been working with the day laborer issue have prepared the list below. Attached are copies of the ordinances cited in this document.

It should be noted that staff reviewed and utilized the attached research report titled “Enforcement and Creation of Ordinances” as a reference in reviewing local ordinances which were relevant to the City’s particular situation.

### **BACKGROUND**

The City has been seeking a resolution for more than a year to the informal gathering of day laborers in an unstructured, unsupervised setting. Initial efforts focused on finding a suitable site to establish a County-funded day laborer center. When the task force report was delivered in April, the Mayor and City Council directed staff to focus on identifying a site that met the spirit of the task force criteria. While site selection continues, no site has been identified for such a center and the prospects do not appear promising.

In the meantime, residents and businesses in the adjacent neighborhoods have expressed a clear desire for stricter adherence to the agreed upon time restrictions at 117 North Frederick Avenue and for greater enforcement of loitering, trespassing and other nuisance violations in the area generally.

The following will outline current enforcement tools and other proposed approaches:

### **ENFORCEMENT**

The City of Gaithersburg Police force will enforce existing City ordinances and State laws, as listed below. Staff envisions that some of these ordinances and laws will continue to be enforced while others are foreseen for future efforts as conditions dictate.

#### ***Banning Authority:***

The City will continue to obtain authorization from private property owners in targeted areas designating the City of Gaithersburg and Montgomery County Police Departments as agents for the property owners. This authority allows police officers to enforce trespass laws without the requirement that the property be posted. *See*, Md. Code Ann., Criminal Law Art., §6-403, Wanton trespass on private property.

Where the police act as agent, if the police encounter an individual on the private property, the police will conduct a field interview, provide the individual with a copy of the field interview document, provide a bi-lingual letter explaining what enforcement action the police may take if

the individual continues to be present at the property, and photograph the individual. If the individual is subsequently seen at the property, the police may arrest the individual and have the individual transported to the County's Central Processing Unit. The City police will coordinate their efforts with Montgomery County Police and the Montgomery County State's Attorney Office to ensure cooperation in consistent enforcement and prosecution.

In the current situation, a private property owner has allowed workers to remain on the property until 9:30 a.m. The City has been notified that it is the intention of the private property owner to discontinue use of the parking lot as an informal gathering site in the coming weeks. If and when this occurs, the City will employ its banning authority at that site.

***City Code:***

Enforcement tools available through existing City ordinances are as follows (copies are attached):

**Sec. 14-7 Parking prohibited at specified places**

**Sec. 15-4 Loitering**

**Sec. 15-7 Urinating or defecating in public**

***State Law:***

Enforcement tools available through existing State law are as follows (copies are attached):

**Md. Code Ann., Criminal Law Art., §10-201**

**Disturbing the public peace and disorderly conduct**

(Note: Although the City has its own Disorderly Conduct ordinance, the police department indicates that the local judges prefer and are more familiar with the state law.)

**Md. Code Ann., Criminal Law Art., §6-402**

**Trespass on posted property**

(Note: The police have indicated that they would prefer to enforce under their banning authority as it is difficult to differentiate, in a posted parking lot, who is authorized to use the lot.)

**Md. Code Ann., Criminal Law Art., §6-403**

**Wanton trespass on private property**

(Banning Authority)

**OTHER APPROACHES**

***Anti-Solicitation Ordinance:***

Upon Council guidance, staff could draft a text amendment to provide an anti-solicitation ordinance that would become effective once a formal, authorized day laborer center is operational. Similar to the ordinance adopted in Herndon, such an ordinance would expand on the City's current prohibition against solicitation in roadways (Sec. 15-9) to prohibit pedestrians

from using highways, sidewalks, driveways, parking areas or alleys to solicit or attempt to solicit employment and prohibit persons in vehicles from exiting vehicles to solicit or attempt to solicit employment from a pedestrian occupying the areas noted above.

***Amendment to Loitering Ordinance:***

Staff supports a text amendment to the loitering ordinance, Sec. 15-4(b)(3). That section currently reads as follows:

“It shall be unlawful for any person to loiter within one hundred (100) feet of any exterior portion of a business establishment selling alcoholic beverages for off-premises consumption, and to fail to obey the direction of a uniformed police officer or upon identification of a properly identified police officer not in uniform, to move on, where not to obey such direction either endangers the public peace or inhibits unimpeded movement of pedestrians and customers along any public way.”

The police have indicated that it would provide greater flexibility to replace the word “loiter” in the first sentence with “to remain” and to make additional amendments to this section. The goal would be to make it unlawful for any person to remain, without lawful business, within one hundred feet of the exterior of a business selling alcoholic beverages for off-premises consumption. Since, under the definition of loiter this section is difficult to enforce, if it were properly amended the police could more easily enforce this important part of the ordinance.

***Additional State Law Provisions:***

As situations dictate and the need arises, the police will enforce of the following state laws (copies are attached):

**Md. Code Ann., Transportation Art., §21-507**  
**Actions by pedestrians barred**

**Md. Code Ann., Transportation Art., §21-1003**  
**Stopping, standing or parking barred**  
(Note: Requires posting of signs)

Attachments

cc: Chris Bonvillain  
Cathy Borten  
Fred Felton  
Cindy Hines  
Tony Tomasello  
Mary Ann Viverette

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Mary Ann Viverette

# **Option B Research Report “Enforcement and Creation of Ordinances”**

**Prepared by Team Members Lauren Husted and Clark Day**

## **INTRODUCTION & ACKNOWLEDGEMENTS**

### **How can the day labor issue in Gaithersburg be addressed in terms of enforcement and creation of ordinances?**

Thanks to Richard Kaufman, City Attorney for Herndon, VA, for graciously taking the time to frankly discuss Herndon's experiences with this difficult issue.

An attempt was made to contact Gaithersburg's City Attorney, Cathy Borten, however she declined to discuss this issue directly, referring questions back to Assistant City Manager Tony Tomasello. Mr. Tomasello, as usual, was most helpful in coordinating and participating in a conference call with the following parties: Greg Ossont, Planning and Code Director and Kevin Roman, Neighborhood Services Director. Their time was very much appreciated.

Thanks also to Officer Kevin Dizon of the Glendale, California Police Department for his invaluable insight into the successes and obstacles in enforcing Glendale's ordinances, and to Sgt. Scott Scarff of the Gaithersburg Police Department.

Initially, this presentation was intended to be broken into 2 components:

- A) Precedents of ordinances which did and did not work with relation to the "Do Nothing" scenario, labeled by the Task Force members as "Option E" (i.e. how can we address the situation as it currently exists through the use of ordinances), and
- B) Precedents of ordinances which did and did not work with regard to the formation of a day labor center.

This initial format evolved as a result of our findings. Over fifty articles and a multitude of web sites were utilized in creating this report. All were available to the Task Force and references have been cited as deemed necessary.

Below is the summary with respect to the findings in relation to the situation in Gaithersburg. Subsequent pages we will reference examples of ordinances from across the country which have been initiated to address a wide range of concerns with regard to the congregation of day laborers in various communities.

## **SUMMARY OF FINDINGS**

A working model could not currently be found to suggest that ordinances have alleviated the problems in other communities faced with a similar day labor situation. Furthermore, ordinances could not be found that have not been (or have not been threatened to be) deemed unconstitutional (with the exception of the noted traffic ordinances). Most of the cities or municipalities that attempted to address this issue through ordinances have been involved in litigation from either day laborer proponents or opponents.

Herndon modeled its ordinances after Glendale, CA, which currently has cases in litigation. Herndon currently has one suit filed against it, with the potential for at least one more. Therefore, enforcement structure will play a significant role in the successful implementation of any recommendation made by the task force. It may be too premature to use Herndon as an example at this time, but until any claim against Herndon is decided by the court and a full legal analysis can be performed, their approach should not be dismissed. Similarly, as demonstrated in the following precedents, there are a multitude of lawsuits underway in response to ordinances that have been adopted or enforced across the country in an effort to address the day labor situation. Much may be learned by analyzing why those approaches failed, and subsequently determining how to avoid similar miscalculations in Gaithersburg. If the Task Force recommends a combination of specific zoning, anti-solicitation, anti-trespassing and traffic ordinances in conjunction with its ultimate recommendation, the city needs to be willing to approach each with an open mind and with the ultimate goal of solving the current issues our community faces. In order to accomplish this, Gaithersburg needs to be willing to continue to monitor other communities and periodically modify or rewrite these city ordinances in response to new developments.

With regard to Gaithersburg, the concern is that none of the ordinances cited below would prove to be either enough of an incentive for the day laborers to use a day labor facility or enough of a disincentive for the contractors to fear reprisal should they continue to solicit workers at the current locations on route 355. Each ordinance is only as powerful as the vigilance of local law departments to enforce them. Many jurisdictions cited existing ordinances on the books that would have addressed the solicitation or loitering issues, but noted a failure to enforce them by local officials.

An interview was conducted with Sgt. Scarff of the Gaithersburg Police Department in order to gain some insight into the current role law enforcement is playing in the situation as well as any limitations they may be facing in addressing this issue in the community. When given examples of methods employed by other communities with respect to the day labor issue, Sgt. Scarff noted that the Gaithersburg Police Department did not have the manpower to dedicate to any one specific location. He also noted that "There is always a lot of talk about supervision, but it's not the police's function to supervise where [the day laborers] stand or use the bathroom. The job of the police is to determine if laws are being broken and the peace is being kept."

Sgt. Scarff also wanted to make clear that a number of community complaints were due to homeless individuals, as well as drunken homeless individuals, some of whom were also Latino, and should not be confused with the day laborers. As with many communities, Gaithersburg has individuals, both long term and relatively new to the area, who are homeless and do not appear to be making any effort to seek employment. Instances of public drunkenness, loitering and trespassing have been noted of these individuals.

One of the greatest problems that the Gaithersburg police face is that the parking lot adjacent to Grace Church is privately owned and the owner has given permission for the

day laborers to be there. The police can only attempt to prevent the day laborers from loitering on the church property itself. Unfortunately, due to the concurrent foot traffic into and out of the building for various church services, meetings and events, it is impossible for the officers to distinguish between those who have a valid reason for being there and those who do not unless church personnel assist officers in identifying individuals.

When asked what ordinances might make his job easier, Sgt. Scarff suggested an ordinance related to public drunkenness (similar to one which currently exists in Virginia). At present, Gaithersburg officers may only make arrests when an individual is causing a public disturbance by such acts as yelling or sleeping in a public pathway.

It was noted that Glendale created the COPPS (Community Oriented Policing and Problem Solving) unit to manage the situation through community officers who act as liaisons to the day laborers, local residents and businesses. Sgt. Scarff said that additional personnel and/or a separate unit could address the problem, but that he couldn't comment further as such a decision ultimately resided with the City's administration.

In many other jurisdictions, traffic violation laws have been heavily enforced (specifically in California) in response to the court rulings on anti-loitering/anti-solicitation laws. In these instances the day laborers have historically congregated on the side of busy highways. In some cases, traffic ordinances were initiated or enforced to address the safety concerns that result when contractors stop on these crowded thoroughfares to pick up day laborers. Logistically, there were no nearby parking lots or shoulders that were wide enough to accommodate large vehicles so that they would not impede highway traffic. This created both a public safety concern (when day laborers rush toward slowing vehicles on busy highways) as well as congestion concerns on California's already over-burdened freeways.

In other instances, traffic ordinances were enforced in response to residential or commercial complaints concerning contractors that pulled into private driveways or alleys in order to pick up day laborers. These actions resulted in safety issues for pedestrians and inaccessibility concerns on public sidewalks; while also creating a nuisance for nearby businesses.

While the congregation of day laborers could logistically be addressed in the above instances through the use of traffic ordinances (if consistently enforced,) traffic ordinances have not ameliorated the congregation of day laborers – it has merely relocated them. As a result, day laborers have often migrated to Home Depot and large nursery store parking lots. Consequently, as noted in the following precedent of ordinances section (see Las Vegas, Nevada,) the result was that local business owners were left to their own devices to resolve the matter; often with their own funds, resulting in lost revenue. The result has been an outcry from business owners at the state and local governments' failure to address this situation, thus forcing the burden (and the bill) onto local commercial districts. It appears that addressing this issue in the private sector is emerging as the latest trend. In California, for instance, legislation has been introduced

that would make the approval for the construction of any new Home Depot store conditional upon their agreement to finance the construction and/or operating costs of a day labor facility on their premises.

With respect to Gaithersburg, however, the current congregation site(s) of the parking lot adjacent to Grace Church and the church property itself, 7-Eleven, and Duron Paint all have parking that will accommodate cars and trucks that pull in off of route 355. Therefore, in the absence of data to suggest otherwise, it must be assumed that traffic ordinances would not work to discourage contractors from soliciting day laborers at the current site(s). However, traffic ordinances may be an effective secondary means of controlling traffic flow (thus addressing public safety concerns) at a designated day labor facility.

Another form of secondary ordinance enforcement that Glendale California utilized was an anti-trespassing ordinance. Business owners and residents were encouraged to sign a form which allowed police to act on their behalf in their absence (see attached form). This form was only valid for 90 days and the police needed to call to remind local businesses and residents prior to the expiration date. Glendale has streamlined this procedure by instituting an online registration and renewal process.

In order to enforce the trespassing violation, the officer must show proof that a previous warning has been issued to the suspect. This can be proven in one of the following manners:

- 1) *No Trespassing* signage could be displayed by the business or residence to be referred to as means of initial warning. However, Officer Kevin Dizon of the Glendale Police Department admitted that often signage is removed by day laborers so that the officer cannot use it as a reference. Additionally, many homeowners and business owners were reluctant to post signage on their property.

- 2) Documentation that the officer had previously warned the individual in question not to trespass on the property through verifying the identity of the individual. The suspect was always asked to show identification. The officer must match the suspect's identity to a previous warning citation in one of the following manners:

- A) Via Valid Proof of Identification Records: The police department would only accept valid state or government issued ID that required identity and address authentication.

- B) Via Picture Database: In the absence of valid ID, the police must take photographs of trespassing violators so that they can subsequently validate that previous warnings have occurred.

It is important to note that Glendale imposed harsh penalties for failure to produce valid identification. In the absence of proper documentation, suspects were arrested and taken

to jail. Trespassing penalties included sixty days in jail, a two to three year probation period, a \$1,000 maximum fine, or a combination of the three. Generally, suspects received a two to three year probationary period with the added condition that they were to remain 100 yards away from the property in question throughout the duration.

Glendale's City Attorney worked diligently in conjunction with the police department in order to impose harsh penalties that would deter future violations. Note that in the above instance violation posed a harsher penalty because the perpetrator was in defiance of a court order.

The diligence of record keeping on behalf of the community policing division was extensive and time consuming. Of the two hundred and sixty officers in the Glendale police department, eight were assigned to the community policing efforts, which handled a scope of issues including the enforcement of the day laborer ordinances.

In terms of relating the Glendale model to Gaithersburg, Officer Dizon offered the following comments:

- 1) Gaithersburg has the advantage of changing seasons to help discourage congregation. (Glendale's average temperature is 75 degrees year round). "Do not offer comforts that encourage loitering," he offered "Make it as uncomfortable for them to be there as possible."
- 2) Vigilant enforcement is absolutely necessary. The minute enforcement eases, the problems return. Officer Dizon described it as a "cat and mouse" game. Often the day laborers know where they are not supposed to go, but in the absence of visible enforcement, they repeatedly return to the same areas.
- 3) Persistent record-keeping is necessary in order to track those who repeatedly defy the ordinances. Officers must be willing to jail offenders each time an infringement occurs.

Officer Dizon also noted that the day laborer population in Glendale actually migrates each morning from Los Angeles (which borders Glendale on three sides). Day laborers who had been congregating at a Home Depot in Los Angeles have found the conditions at the Home Depot in Glendale much more conducive to securing work.

Regardless of the recommendation of the Day Labor Task Force to the City of Gaithersburg ("do nothing" or create a day labor center), we can not stress enough the necessity of police personnel (in either case) to consistently monitor, mediate and enforce (when necessary) necessary ordinances to maintain public order in our community. The arrangement that currently exists in Gaithersburg consists of patrolling by enforcement personnel who are unable to clearly identify trespassing or loitering infringements. All of the precedents cited (most notably Glendale, California) illustrate the need for police personnel who are charged with maintaining public order. If Gaithersburg chooses to adopt new ordinances to address either the situation as it currently exists, or the situation that would exist should a day labor center be built, it may face challenges in successfully implementing them based on the City's current law enforcement structure. Given the

uncertainty of ordinances in many other jurisdictions, Gaithersburg needs to approach this issue on several different fronts in order to find a successful resolution to the issues we face.

## **EXAMPLES OF ORDINANCES IN OTHER JURISDICTIONS**

Beginning in the West Coast where anti-solicitation ordinances began as the standard:

### **Los Angeles, CA:**

Los Angeles initiated an anti-solicitation ordinance which banned employers from soliciting work from pedestrians. In 2000, a federal judge declared the ordinance unconstitutional. (Litigations against Glendale and Redondo Beach, CA are currently underway for similar ordinances).

Pablo Alvarado, national coordinator for the LA based National Day Laborer Organizing Network commented: "None of those ordinances have been effective anywhere in the country...many have been ruled unconstitutional." In nearly every case, he adds, problems return because government and law-enforcement officials can't maintain the necessary aggressive enforcement. "Regardless of enforcement, workers have to feed their families and will do anything to continue to do that." "Las Vegas" he adds, "would do well to learn from the eight-year failure on Bonanza Road...invariably day laborers returned once enforcement subsided..." (Damon Hodge, "Experts: New Tactics Needed to Deal with Day Laborers," Las Vegas Weekly, April 7-13 edition was the source of the above citations)

Additionally, it's worth noting that the LA City Council is considering a proposal to require all large home improvement stores (i.e. Home Depot) to build day laborer hiring sites.

### **Redondo Beach, CA:** (several miles south of LA International Airport)

Passed an ordinance barring day laborers from seeking work on its streets. However, the laborers continued to gather in defiance of the ordinance. When police cited or arrested 65 laborers, the laborers reacted by marching on City Hall. The Mexican American Legal Defense and Education Fund (MALDEF) got involved and sued the city. They won. In December of 2004 a US District Judge temporarily blocked enforcement of the ordinance and another US District Judge subsequently struck down a similar ordinance in Glendale, CA.

### **Glendale, CA:**

Adopted an anti-solicitation ordinance prohibiting the solicitation of day workers from vehicles and day workers from soliciting work from persons in vehicles. This ordinance only works legally if there is an existing, usable site to refer the workers to go to. The purpose of the ordinance was to prevent alternate, informal sites from developing. The legislation does not work in the absence of an existing official site.

The Glendale Police Captain, Mark Distaso remarked of the issue: "Local government doesn't exist to drive that kind of [day laborer] policy. This is something that needs to be dealt with on a federal level."

(Carl F. Horowitz, Laborers, Loitering and Land use: Why Local Government Cannot handle Immigration," The Immigration Dimension).

#### **Santa Clarita, CA:**

In January 2005 the city decided against opening a hiring center so that they could address the roadside solicitation problem by adopting an anti-solicitation ordinance. However, they tabled the issue while they await the outcome of the lawsuit filed against Glendale, CA (a federal court ruled Glendale's ordinance prohibiting day laborers from seeking work on street corners unconstitutional.)

In response to public pressure, last month, the city attorney announced he will vigorously pursue enforcement of laws that prohibit hiring day laborers who are illegal immigrants. (Judy O'Rourke, "Crackdown on Illegal's Set," [dailynews.com](http://dailynews.com), January 26, 2006).

A report will look into whether the current city's trespassing and anti-loitering ordinances can be more stringently enforced. Additionally, this report will detail how city contracts can be amended to require vendors to certify that they do not employ undocumented workers. Spot checks would be performed by the city's code enforcement officers.

However, despite the existing ordinances, the Sheriff's Dept. does not enforce the ordinance if the laborer is not suspected of committing a crime. Sgt. Bill Weiss explains that "If there's a problem, a safety hazard, blocking traffic, graffiti, vandalism *that* is enforceable." (Judy O'Rourke, "Crackdown on Illegal's Set," [dailynews.com](http://dailynews.com), January 26, 2006).

#### **Burbank, CA:**

The City Council voted last month (January 2006) to approve a contract with Catholic Charities to run a day labor center at a new Home Depot Store.

#### **Las Vegas, NV:**

Eight years ago, Las Vegas initiated an anti-solicitation ordinance that banned employers from soliciting work from pedestrians with fines of up to \$1,000, and/or 6 months in jail. (Subsequently, the county ruled it unconstitutional.) Workers reacted by moving to a local nursery parking lot. Local businesses had to take matters into their own hands and hire private security, at their own expense, to control customer safety concerns.

Mel Hadfield, office manager of LV state's Casual Labor Office (which helps companies find temporary workers) offered the following advice in response to the subsequent anger of the local business owners: "Go after employers...As long as companies know they can get cheap labor off the street, there'll be day laborers." (Damon Hodge, "Experts: New Tactics Needed to Deal with Day Laborers," *Las Vegas Weekly*, April 7-13 edition).

#### **Austin City, TX:**

In December of 2005, the City Council agreed to withdraw a proposed ordinance which would have banned day labor solicitation from sidewalks and other public spaces in the

city. Instead they decided to establish a community advisory committee to research other ways to accommodate the city's day laborers and the public simultaneously. This was the result of pressure from day laborers and religious leaders.

**Austin, TX:**

Implemented "Labor Solutions" on city-owned property to provide restrooms and shelter while laborers await work. There have been problems getting the workers to use the formal site rather than continuing to wait on the streets. Ordinances were not enforced to discourage public congregation. Rather than create a new anti-solicitation ordinance, it was the advice of city legal staff to increase enforcement of existing traffic related ordinances.

A number of other cities have attempted to resolve this issue through the adoption or enforcement of anti-loitering ordinances:

**Chicago, IL:**

In the early 1990's Chicago adopted loitering laws to control their increasing gang problems. It allowed police to break up gatherings if they perceived that anyone could be a gang member. "The US Supreme Court struck down the ordinance in 1999, ruling that it was too vague and allowed police to use an arbitrary standard of enforcement." (Terry Corcoran, "Loitering Laws Ineffective in Day-Laborer Issue," The Journal News, January 30, 2006).

**Westchester County, New York:**

**Mount Kisco, NY:**

In 1991 Mount Kisco tried to draft an anti-loitering law to address the sidewalk congestion they faced. They were told that such laws tend to be discriminatory. (Terry Corcoran, "Loitering Laws Ineffective in Day-Laborer Issue," The Journal News, January 30, 2006). In 2000 they opened Neighbors Link, an indoor hiring site for day laborers.

**Brewster, NY:**

In 1994 Brewster tabled a loitering ordinance because they worried it would be proven unconstitutional. Brewster, NY is currently still wary of instituting an anti-loitering law, because they are often deemed unconstitutional. Brewster recognized that you couldn't institute an anti-solicitation ordinance without having a legitimate location for the laborers to congregate because it went against the First Amendment right to "peaceably assemble."

"In NY the only types of anti-loitering laws that were upheld by the NY Court of Appeals were ones that prohibited loitering for the purpose of committing a crime, or laws that prohibited loitering in restricted public places." (Terry Corcoran, "Loitering Laws Ineffective in Day-Laborer Issue," The Journal News, January 30, 2006).

Linda Berns, the Executive Director of the Lower Hudson chapter of the NY Civil Liberties Union stated: "We...oppose no-loitering laws, because standing on a public

street is not loitering.” (Terry Corcoran, “Loitering Laws Ineffective in Day-Laborer Issue,” The Journal News, January 30, 2006).

Which brings us to the most recent (and local) example of ordinance adoption: Herndon, Virginia.

**Herndon, VA:**

Herndon enacted a zoning ordinance which was modeled after Glendale, CA. It created a temporary day worker assembly site (for conditional use). Not only is it too early to tell if this will be effective, but its success is entirely dependent upon both enforcement as well as legality. Herndon is currently being sued regarding this ordinance by Judicial Watch. Loudoun County also plans to challenge Herndon on the zoning ordinance and it is believed to have a strong case.

Herndon also initiated an anti-solicitation ordinance which works in conjunction with their zoning ordinance (which, as previously stated, may be ruled unlawful). It states that congregation/solicitation anywhere other than pre-approved site is prohibited. Fines range from \$250 for a civil violation to \$1,000 for a criminal violation. No fines have been issued yet (possibly due to lack of enforcement personnel). This ordinance only works in conjunction with the above zoning ordinance. Other cities have been sued and anti-solicitation ordinances have been ruled unlawful at either the county or federal level.

In addition to the fact that Herndon is currently being sued with regard to the zoning ordinance and could be sued in the future with regard to the anti-solicitation ordinance, there are several key points to bear in mind with regard to both of their newly adopted ordinances:

A) The US Supreme Court has held general anti-loitering ordinances as void, but suggested that an ordinance prohibiting loitering tied to another form of criminal activity may be legal. Therefore the loitering law would only be effective if directly tied to another form of criminal activity. (Refer to the previous Chicago anti-loitering ordinance that was targeted at suppressing gang-related activity). They also note that the argument can be made that day laborers are not loitering as defined by Fairfax County law or any other anti-loitering ordinance.

B) In terms of connecting the loitering to an illegal immigrant status as a means of connecting it to another form of criminal activity (which has been suggested), Herndon police are restricted from enforcing federal immigration laws (this principle also extends to the contractors who are hiring workers that lack proper employment documentation.)

Most likely based upon the resulting conflict from the approval of a day laborer facility in Herndon, several weeks ago a new law took effect in Virginia stating:

*“No person who is not a United States Citizen or legally present in the United States shall receive state or local public assistance.”*

This law will directly challenge the \$175,000 subsidy from Fairfax County to operate the Herndon center. It would be likely to presume that this law was in response to the public outcry at taxpayer funds being used to subsidize Herndon's day laborer facility.

Therefore, we have the pro-day-labor organizations suing on one side with regard to the anti-solicitation ordinances, and the anti-illegal-immigration organizations suing with regard to the zoning ordinances.

Meanwhile, Herndon's City Attorney was quite frank in stating that the location of the center has resulted in a firestorm from local residents who feel that the center is zoned to close to a residential neighborhood – something he readily admits is a problem, but that Herndon's sprawl developed in such a manner that there is no location in which there is a clearly defined separation between residential and commercial boundaries.

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#### **DISCLAIMER**

The Option B Sub-Committee makes the following Disclaimer:

In the Attachments section are examples of ordinances in Herndon, Virginia, Gaithersburg, Maryland and Montgomery County, Maryland.

The Herndon ordinances were submitted to this sub-committee by Herndon's City Attorney and are directly referenced in the report.

The Gaithersburg Ordinances were submitted to the sub-committee as potentially applicable ordinances by Tony Tomasello, Assistant City Manager for the City of Gaithersburg, in order to be utilized as a point of reference for the task force. The Montgomery County ordinances are examples of potentially applicable ordinances as determined by the author of this report. The Option B sub-committee did not have any assistance from Montgomery County in selecting the most appropriate ordinances. The Option B sub-committee did not have assistance in translating or determining current application or enforcement of these ordinances and therefore can only include these examples in the context that they may provide a useful point of reference.

## **Option B - Ordinances, Dissenting Report**

We offer this dissent because: 1. The Option B Final Report (the Report) does not adequately recognize the ongoing efforts of the Gaithersburg Police in dealing with the day laborer issue and the improvement in the behavior of the day laborers that use the parking lot adjacent to Grace Church, and 2. The Report suggests that new ordinances and more stringent police presence are needed to address the day laborer issue.

The question that Task Force members addressed was: **How can city ordinances and or newly created ordinances and their enforcement help with the day laborer issue in Gaithersburg?**

The authors of this Dissenting Report agree with the Report when it states that the research collected shows that ordinances alone have not resolved the day laborer issues in the cities and municipalities researched, and that many ordinances, other than traffic-related, have been deemed unconstitutional or are under litigation.

The Report focuses largely on the experience of Herndon, VA which in turn modeled its ordinances after those of Glendale, CA, and suggests that ordinances currently in effect in Gaithersburg may have to be modified. We note that the Report emphasizes, by using Glendale, CA as an example, the use of stringent enforcement and harsh penalties. In contrast, the Report does not state that Gaithersburg has ordinances that are being enforced throughout the City and, in particular, at the informal day laborer site in the parking lot adjacent to Grace Church. An example of relying on existing ordinances is Austin, TX where the city legal staff advised only the use of increased enforcement.

The Gaithersburg Police force has an important role to play in handling the current day laborer issue in Gaithersburg. It is significant that the Report fails to acknowledge that the Gaithersburg Police have exhibited the skills needed to handle the day laborer issue, and fails to note how successful they have been in managing the informal day laborer site. The police visit the site everyday. They have communicated to the day laborers the expectations of the community regarding appropriate behavior. For example, the policewoman, Isabel Salgado, who speaks Spanish fluently, not only reminds the laborers of the 9:30 a.m. time limit but converses with them in a friendly and respectful tone. This has been crucial in promoting positive change. In fact, in the Summary of the Ad Hoc Committee Presentation, Sgt. Scarff of the Gaithersburg Police said that the police were not seeing the crime they had in the past, which he credited to the supervision and continuing effort on the part of the police to educate individuals on inappropriate behavior. More recently, Sgt. Scarff said that it has been seven months since the police have received a valid complaint about the behavior of the day laborers. All of the foregoing suggest, in our opinion, that the current police presence and enforcement of existing ordinances are sufficient, and we have no reason to doubt that this will not continue if a day laborer center were to be located elsewhere in Gaithersburg.

Finally, in a March 3 telephone interview Lt. Christopher Bonvillian of the Gaithersburg Police stated that there have been calls complaining of day laborers walking down the

street, but these types of complaints simply are not valid, and that the day laborers have not been seen violating laws. Lt. Bonvillian suggested that the day laborers are sometimes confused with homeless drunks that frequent the area. With regard to the need for an officer dedicated to monitoring the day laborers, he stated that the day laborers do not need a baby sitter in the form of a police officer.

Respectfully submitted:

Daniel R. Muller, Lucia da Costa Lima, John W. Thomas, and Gloria A. Aparicio

March 14, 2006

**Sec. 14-7. Parking prohibited at specified places.**

Except as necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic control device, no person shall stop, stand or park any vehicle in any of the following places:

- (a) On or over any curb or sidewalk.
- (b) Within an intersection.
- (c) Within twenty (20) feet of a crosswalk or on a crosswalk.
- (d) Within thirty (30) feet of the approach to any flashing signal, stop sign, yield sign or traffic control signal located at the side of a roadway.
- (e) Within fifteen (15) feet of a fire hydrant.
- (f) Within twenty (20) feet of the driveway entrance to any fire station.
- (g) At any place where stopping, standing or parking is prohibited by an official sign.
- (h) At any place designated as a fire lane by an official sign or a curb that is painted yellow.
- (i) Alongside or opposite any street excavation or obstruction when such stopping, standing or parking would obstruct traffic.
- (j) On any entrance or exit ramp of any highway.
- (k) Upon any bridge or other elevated structure or within a highway tunnel.
- (l) Within fifty (50) feet of the nearest rail of a railroad grade crossing.
- (m) Between a safety zone and the adjacent curb or within thirty (30) feet of points on the curb immediately opposite the ends of a safety zone, unless the state highway administration or local authority indicates a different length by signs or markings.
- (n) In a space or zone marked as restricted for the use of handicapped individuals unless the vehicle displays special registration plates for disabled or handicapped persons or a special permit for such person issued by the county, the state, or any other state, county or city.
- (o) On any property owned by the board of education of the county where parking is prohibited by an official sign.

(Res. No. R-30-65, § 1-1.04; Ord. No. O-2-79; Ord. No. O-14-01, 8-6-01)

**Sec. 15-4. Loitering.**

(a) *Definitions.* For the purposes of this section, the following words and phrases shall have the meanings respectively ascribed to them by this subsection:

(1) *Loiter.* To stand around or remain, or to park or remain parked in a motor vehicle at a public place or place open to the public and to engage in any conduct prohibited under this law. "Loiter" also means to collect, gather, congregate or be a member of a group or a crowd of people who are gathered together in any public place or place open to the public and to engage in any conduct prohibited under this section.

(2) *Place open to the public.* Any place open to the public or any place to which the public is invited, and in, on or around any privately owned place of business, private parking lot or private institution, including places of worship, cemeteries or any place of amusement and entertainment, whether or not a charge of admission or entry thereto is made. It includes the elevator, lobby, halls, corridors and areas open to the public of any store, office or apartment building.

(3) *Public place.* Any public street, road or highway, alley, lane, sidewalk, crosswalk or other public way, or any public resort, place of amusement, park, playground, public building or grounds appurtenant thereto, school building or school grounds, public parking lot or any vacant lot.

(b) *Prohibited conduct.*

(1) It shall be unlawful for any person to loiter at, on or in a public place or place open to the public in such manner:

a. To interfere, impede or hinder the free passage of pedestrian or vehicle traffic; or

b. To interfere with, obstruct, harass, curse or threaten or do physical harm to another member or members of the public; or

c. That, by words, acts or other conduct, it is clear that there is reasonable likelihood to result in a breach of the peace or disorderly conduct.

(2) It shall be unlawful for any person to loiter at a public place or place open to the public and to fail to obey the direction of a uniformed police officer or the direction of a properly identified police officer not in uniform to move on, when not to obey such direction shall endanger the public peace.

(3) It shall be unlawful for any person to loiter within one hundred (100) feet of any exterior portion of a business establishment selling alcoholic beverages for off-premises consumption, and to fail to obey the direction of a uniformed police officer or upon identification of a properly identified police officer not in uniform, to move on, where not to obey such direction either endangers the public peace or inhibits unimpeded movement of pedestrians and customers along any public way.

(c) *Identification.* It shall be unlawful for any person at a public place or place open to the public to refuse to identify himself by name and address at the request of a uniformed police officer or of a properly identified police officer not in uniform, if the surrounding circumstances are such as to indicate to a reasonable man that the public safety requires such identification.

(d) *Lawful assembly.* Nothing in this section shall be construed to prohibit orderly picketing or other lawful assembly.

(e) *Warning.* No person shall be charged with a violation of this section unless and until the arresting officer has first warned the person of the violation and such person has failed or refused to stop such violation.

(Ord. No. O-2-69; Ord. No. O-5-95, 6-5-95)

**Sec. 15-7. Urinating or defecating in public.**

It shall be unlawful for any person to urinate or defecate on or about any public place, way, building, structure or park, or on or about any privately owned retail business establishment or parking area adjacent thereto. This section shall not apply to such conduct in any enclosed restroom or similar facility clearly designated to the public for such activity.

(Ord. No. O-5-95, 6-5-95)

**SUBTITLE 2—DISTURBING THE PEACE, DISORDERLY  
CONDUCT, AND RELATED CRIMES**

**§ 10-201. Disturbing the public peace and disorderly conduct**

**Definitions**

(a)(1) In this section the following words have the meanings indicated.

(2)(i) "Public conveyance" means a conveyance to which the public or a portion of the public has access to and a right to use for transportation.

(ii) "Public conveyance" includes an airplane, vessel, bus, railway car, school vehicle, and subway car.

(3)(i) "Public place" means a place to which the public or a portion of the public has access and a right to resort for business, dwelling, entertainment, or other lawful purpose.

(ii) "Public place" includes:

1. A restaurant, shop, shopping center, store, tavern, or other place of business;
2. A public building;
3. A public parking lot;
4. A public street, sidewalk, or right-of-way;
5. A public park or other public grounds;
6. The common areas of a building containing four or more separate dwelling units, including a corridor, elevator, lobby, and stairwell;
7. A hotel or motel;
8. A place used for public resort or amusement, including an amusement park, golf course, race track, sports arena, swimming pool, and theater;
9. An institution of elementary, secondary, or higher education;
10. A place of public worship;
11. A place or building used for entering or exiting a public conveyance, including an airport terminal, bus station, dock, railway station, subway station, and wharf; and
12. The parking areas, sidewalks, and other grounds and structures that are part of a public place.

**Construction of section**

(b) For purposes of a prosecution under this section, a public conveyance or a public place need not be devoted solely to public use.

**Prohibited**

(c)(1) A person may not willfully and without lawful purpose obstruct or hinder the free passage of another in a public place or on a public conveyance.

(2) A person may not willfully act in a disorderly manner that disturbs the public peace.

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(3) A person may not willfully fail to obey a reasonable and lawful order that a law enforcement officer makes to prevent a disturbance to the public peace.

(4) A person who enters the land or premises of another, whether an owner or lessee, or a beach adjacent to residential riparian property, may not willfully:

(i) Disturb the peace of persons on the land, premises, or beach by making an unreasonably loud noise; or

(ii) Act in a disorderly manner.

(5) A person from any location may not, by making an unreasonably loud noise, willfully disturb the peace of another:

(i) On the other's land or premises;

(ii) In a public place; or

(iii) On a public conveyance.

(6) In Worcester County, a person may not build a bonfire or allow a bonfire to burn on a beach or other property between 1 a.m. and 5 a.m.

**Penalty**

(d) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 60 days or a fine not exceeding \$500 or both.

Added by Acts 2002, c. 26, § 2, eff. Oct. 1, 2002.

Formerly Art. 27, § 121.

**Legislative Notes**

**Revisor's Note (Acts 2002, c. 26):**

This section is new language derived without substantive change from former Art. 27, § 121.

Subsection (b) of this section is revised as a construction provision for clarity.

In subsection (a)(2)(i) and (3)(i) of this section, the former references to the "general" public are deleted as unnecessary.

In subsection (a)(2)(ii) of this section, the former reference to a "boat" is deleted as included in the comprehensive reference to a "vessel".

Also in subsection (a)(2)(ii) of this section, the former reference to a "school bus" is deleted in light of the comprehensive reference to a "school vehicle".

In subsection (a)(3)(ii)12 of this section, the former reference to parking "lots" is deleted as included in the reference to "parking areas".

In subsection (c)(5) of this section, the former phrase "in a place of business" is deleted as included in the definition of "public place".

Defined term: "Person" § 1-101

**Historical and Statutory Notes**

**Derivation:**

Former Art. 27, § 121, related to obstructing or hindering free passage in a public place or

on a public conveyance, repealed by Acts 2002, c. 26, § 1.

**Library References**

**Key Numbers**

Breach of The Peace ⇐1, 14.

Westlaw Key Number Searches: 62k1;  
62k14.

**Encyclopedias**

C.J.S. Breach of the Peace §§ 2 to 5, 13.

Maryland Law Encyclopedia Highways § 39.

Historical and Statutory Notes

Derivation:

Former Art. 27, § 576, related to definitions,  
repealed by Acts 2002, c. 26, § 1.

United States Code Annotated

Public lands, trespass, damage to, and removal of property, federal crimes and offenses, see 18  
U.S.C.A. § 1851 et seq.

Notes of Decisions

Wanton 1

1. **Wanton**  
"Wanton," as used in trespass statute, means  
characterized by extreme recklessness and utter

disregard for rights of others. Code 1957, Art.  
27, § 577; Art. 27, § 577(a)(3) (Repealed). In  
re Jason Allen D., 1999, 733 A.2d 351, 127  
Md.App. 456. Trespass 1

§ 6-402. Trespass on posted property

Prohibited

(a) A person may not enter or trespass on property that is posted conspicuously against trespass by:

- (1) Signs placed where they reasonably may be seen; or
- (2) Paint marks that:

(i) Conform with regulations that the Department of Natural Resources adopts under § 5-209 of the Natural Resources Article; and

(ii) Are made on trees or posts that are located:

1. At each road entrance to the property; and
2. Adjacent to public roadways, public waterways, and other land adjoining the property.

Penalty

(b) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 90 days or a fine not exceeding \$500 or both.

Added by Acts 2002, c. 26, § 2, eff. Oct. 1, 2002.

Formerly Art. 27, § 577.

Legislative Notes

Revisor's Note (Acts 2002, c. 26):

This section is new language derived without substantive change from former Art. 27, § 577(a)(1) and (b).

In the introductory language of subsection (a) of this section, the reference to property being posted against "trespass" is substituted for the former reference to property being posted against "trespassers" for clarity and consistency within this subtitle.

In subsection (a)(1) of this section, the phrase "signs placed where they reasonably may be seen" is substituted for the former phrase "[s]igns where they may reasonably be seen" to clarify that the requirement that signs be posted conspicuously applies to the location as well as the content of the signs.

In subsection (a)(2)(i), the reference to regulations that the Department of Natural Resources adopts "under § 5-209 of the Natural Resources Article" is added for clarity.

officer had probable cause to arrest for trespass at public housing project knowing that he had been banned from the project two years earlier; the officer observed defendant driving on the street and believed that he had due notice not to enter the property. U.S.C.A. Const. Code 1957, Art. 27, § 577(a)(1, 2). Johnson v. State, 1999, 740 A.2d 498. Arrest ⇨ 63.4(13)

lacked probable cause to arrest juvenile for purposes of determining whether he could be found delinquent based on existing that arrest; although arresting juvenile "hanging out" on sidewalk housing project two hours after his trespassing at project, earlier arrest questionable validity, and officer did not know whether anyone in group of people with juvenile was talking when arrested at project, and as to whether juvenile best of any such person. Code 1957, Art. 27, § 577(a)(3) (Repealed). In re Jason Allen D., 1999, 733 A.2d 351, 127 Md.App. 456. Infants ⇨ 153

officer's testimony that juvenile was trespassing at public housing project when trespassing was sufficient in ensuing proceeding to support finding that as on that property when arrest occurred. Code 1957, Art. 27, § 577; Art. 27, § 577(a)(3) (Repealed). In re Jason Allen D., 1999, 733 A.2d 351, 127 Md.App. 456. Infants ⇨ 153

deputy sheriff, appointed by county application of amusement park operator, arrested defendants for misdemeanor trespass when they refused to leave following request. Code 1957, Art. 27, § 577. Griffin v. State, 1961, 171 A.2d 422, certiorari granted 82 S.Ct. 1577, 370 U.S. 935, 8 L.Ed.2d 805, reversed 84 S.Ct. 1770, 378 U.S. 130, 12 L.Ed.2d 754. Trespass ⇨ 88

deputy sheriff, appointed by county application of amusement park operator, arrested defendants for misdemeanor trespass when they refused to leave following request. Code 1957, Art. 27, § 577. Griffin v. State, 1961, 171 A.2d 422, certiorari granted 82 S.Ct. 1577, 370 U.S. 935, 8 L.Ed.2d 805, reversed 84 S.Ct. 1770, 378 U.S. 130, 12 L.Ed.2d 754. Arrest ⇨ 63.4(13)

#### and seizure

police had received permission to enter premises from owner and defendants had no right to occupy or be on the premises, and officers when on premises were not by, and observations of one defendant injecting himself an injection, another defendant with gelatin capsules in plain view, and envelopes with capsules out window of another defendant attempting to throw window constituted sufficient probable cause to arrest for unlawful possession and distribution of narcotic drugs. Code 1957, art. 27, § 577. Griffin v. State, 1961, 171 A.2d 422, certiorari granted 82 S.Ct. 1577, 370 U.S. 935, 8 L.Ed.2d 805, reversed 84 S.Ct. 1770, 378 U.S. 130, 12 L.Ed.2d 754. Arrest ⇨ 63.4(13)

certiorari denied 258 Md. 729. Arrest ⇨ 63.4(13)

Where officers were lawfully on premises, having received permission to enter from legal owner, and defendants had no lawful right to occupy or be on premises and officers had probable cause to believe defendants had committed felonies of unlawful possession and control of narcotic drugs from their observations after entering premises, search of entire premises, consisting of only four rooms and a bath, and seizure of evidence found therein was reasonable as incident to legal arrests. Code 1957, art. 27, § 577. Jason v. State, 1970, 262 A.2d 774, 9 Md.App. 102, certiorari denied 258 Md. 728, certiorari denied 258 Md. 729. Arrest ⇨ 63.4(13)

#### 9. Indictment or information

Where defendants were acquitted of offense of trespass charged in challenged indictment, defendants were not entitled to relief on contention that indictment charging trespass and jointly tried with other indictments against defendants was faulty. Jason v. State, 1970, 262 A.2d 774, 9 Md.App. 102, certiorari denied 258 Md. 728, certiorari denied 258 Md. 729. Criminal Law ⇨ 1167(1)

### § 6-403. Wanton trespass on private property

#### Prohibited—Entering and crossing property

(a) A person may not enter or cross over private property or board the boat or other marine vessel of another, after having been notified by the owner or the owner's agent not to do so, unless entering or crossing under a good faith claim of right or ownership.

#### Prohibited—Remaining on property

(b) A person may not remain on private property including the boat or other marine vessel of another, after having been notified by the owner or the owner's agent not to do so.

#### Penalty

(c) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 90 days or a fine not exceeding \$500 or both.

#### Construction of section

(d) This section prohibits only wanton entry on private property.

#### Applicability to housing projects

(e) This section also applies to property that is used as a housing project and operated by a housing authority or State public body, as those terms are defined in Article 44A of the Code, if an authorized agent of the housing

authority or State public body gives the required notice specified in subsection (a) or (b) of this section.

Added by Acts 2002, c. 26, § 2, eff. Oct. 1, 2002.

Formerly Art. 27, § 577.

#### Legislative Notes

##### Revisor's Note (Acts 2002, c. 26):

This section is new language derived without substantive change from former Art. 27, § 577(a)(2) and (b).

In subsection (a) of this section, the former references to "land" and "premises" are deleted as included in the reference to "private property".

Also in subsection (a) of this section, the former reference to being "duly" notified is deleted as surplusage.

In subsection (d) of this section, the reference to entry "on private property" is added for clarity and consistency with subsection (a) of this section. Correspondingly, the reference to "private property" is substituted for the former reference to "land".

In subsection (e) of this section, the former reference to a "duly" authorized agent is deleted as implicit in the reference to an "authorized agent".

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that subsection (d) of this section appears to prohibit only "wanton" entry onto private property, but not "wanton[ly]" remaining on private property after being notified not to do so.

Defined terms: "Person" § 1-101

"Wanton" § 6-401

#### Historical and Statutory Notes

##### Derivation:

Former Art. 27, § 577, related to entering or trespassing on private property, repealed by Acts 2002, c. 26, § 1.

#### Law Review and Journal Commentaries

Guilt by Association—Trespassing and Anti-Loitering Laws. Deborah T. Eisenberg & Jonathan M. Smith, 32 Md. B.J. 45 (May/June 1999).

#### Library References

##### Key Numbers

Trespass ⊕ 76.

Westlaw Key Number Search: 386k76.

##### Encyclopedias

C.J.S. Trespass §§ 172, 174 to 177, 191.

#### Notes of Decisions

Arrest 7  
Common law 1  
Constitutional rights 2  
Juveniles 6  
Posted property 3  
Public accommodations 5  
Search and seizure 8  
Warning or notice 4  
Weight and sufficiency of evidence 9

##### 1. Common law

Mere trespass to real property is not crime at common law unless it amounts to breach of peace; thus, criminal trespass is for the most part a statutory creation. Code 1957, art. 27,

§§ 576-580. In re Appeal No. 631 (77) From Dist. Court of Montgomery County, Juvenile Division, 1978, 383 A.2d 684, 282 Md. 223. Trespass ⊕ 76

At common law, trespass to private property is not crime unless it is accompanied by, or tends to create, breach of peace. Code 1957, art. 27, § 577. Griffin v. State, 1961, 171 A.2d 717, 225 Md. 422, certiorari granted 82 S.Ct. 1577, 370 U.S. 935, 8 L.Ed.2d 805, reversed 84 S.Ct. 1770, 378 U.S. 130, 12 L.Ed.2d 754. Trespass ⊕ 1

##### 2. Constitutional rights

Action of one who was deputized as sheriff and was employee of park under contract to

## § 21-502

## TRANSPORTATION

### Historical and Statutory Notes

#### 2003 Legislation

Acts 2003, c. 325, § 1, in subsec. (a)(2)(ii), substituted "from an adjacent lane on the other half of the roadway" for "so closely from the other half of the roadway as to be in danger".

#### 2004 Legislation

Acts 2004, c. 388, § 1, repealed and reenacted this section without amendment.

### Research References

#### Encyclopedias

Maryland Law Encyclopedia Attachment § 15, Generally.

Maryland Law Encyclopedia Autos & Motor Vehicles § 118, Duty to Pedestrians at Crossings or Intersections.

Maryland Law Encyclopedia Autos & Motor Vehicles § 119, Duty to Pedestrians at Crossings or Intersections—Right-Of-Way, Generally.

## § 21-503. Pedestrian not crossing at crosswalk

### Research References

#### Encyclopedias

Maryland Law Encyclopedia Autos & Motor Vehicles § 118, Duty to Pedestrians at Crossings or Intersections.

Maryland Law Encyclopedia Autos & Motor Vehicles § 119, Duty to Pedestrians at Crossings or Intersections—Right-Of-Way, Generally.

## § 21-504. Duty of drivers

### Research References

#### Encyclopedias

Maryland Law Encyclopedia Autos & Motor Vehicles § 116, Pedestrians, Generally.  
Maryland Law Encyclopedia Autos & Motor Vehicles § 117, Pedestrians, Generally—Lookout and Signals.

Maryland Law Encyclopedia Autos & Motor Vehicles § 122, Children.

## § 21-506. Rules for pedestrians on roadways

### Research References

#### Encyclopedias

Maryland Law Encyclopedia Autos & Motor Vehicles § 198, Pedestrians, Generally—Walking or Standing on Street or Highway.



## \* § 21-507. Actions by pedestrians barred

(a) Except for the occupant of a disabled vehicle who seeks the aid of another vehicle, a person may not stand in a roadway to solicit a ride, employment, or business from the occupant of any vehicle.

(b) A person may not stand on or near a highway to solicit any other person to watch or guard any vehicle while it is parked or about to be parked on a highway.

(c) In Carroll County, Charles County, Frederick County, Harford County, and Washington County, a person may not stand in a roadway, median divider, or intersection to solicit money or donations of any kind from the occupant of a vehicle.

(d)(1) In Prince George's County:

(i) A child under the age of 15 years may not stand in a roadway, median divider, or intersection to solicit money or donations of any kind from the occupant of a vehicle; and

(ii) An adult may not cause, encourage, allow, or petition a child under the age of 15 years to stand in a roadway, median divider, or intersection to solicit money or donations of any kind from the occupant of a vehicle.

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l, c. 388, § 1, repealed and reenacted  
without amendment.

Law Encyclopedia Autos & Motor Ve-  
119, Duty to Pedestrians at Crossings  
sections—Right-Of-Way, Generally.

Law Encyclopedia Autos & Motor Ve-  
119, Duty to Pedestrians at Crossings  
sections—Right-Of-Way, Generally.

Law Encyclopedia Autos & Motor Ve-  
122, Children.

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petition a child under the age of 15  
ection to solicit money or donations

## TRANSPORTATION

§ 21-507

(2) A child under the age of 15 years may not be found guilty or adjudicated delinquent for a violation of paragraph (1)(i) of this subsection if an adult caused, encouraged, allowed, or petitioned the child in violation of paragraph (1)(ii) of this subsection.

(e)(1) This subsection applies to Anne Arundel County.

(2) In this subsection, "qualified organization" means a fire company or a bona fide religious, fraternal, civic, war veterans', or charitable organization.

(3) The Anne Arundel County Council may, by ordinance, enact a licensing program for individuals who are 18 years old or older and qualified organizations that wish to solicit money or donations from the occupant of a vehicle by standing in a roadway, median divider, or intersection.

(4) The restriction on the age of individuals who may be licensed under the authority granted to the Anne Arundel County Council under paragraph (3) of this subsection applies to individuals who participate in the solicitation of donations as members or on behalf of the qualified organization.

(5) If the county council enacts an ordinance establishing a licensing program authorized by paragraph (3) of this subsection, the ordinance:

(i) May impose on an applicant that is an individual or a qualified organization a fee for the license, subject to item (ii) of this paragraph, in an amount not to exceed the county's cost to administer the program;

(ii) May not impose a fee exceeding \$100 per year for each applicant for a license or a renewal of a license;

(iii) Shall include provisions for the duration and renewal of the license;

(iv) May require that an applicant or licensee provide notice to the county as to the dates on which the solicitation will occur; and

(v) May provide for:

1. An exemption from the fee for an individual who is unable to pay the fee; and

2. Procedures for an individual to comply with in order to demonstrate the individual's inability to pay the fee.

(6) An ordinance that imposes a fee under paragraph (5) of this subsection on an applicant that is a qualified organization organized on a national or statewide basis and having more than one county or local chapter in the State shall impose one fee to be paid by the national or statewide organization to cover all of the county or local chapters in the State.

(7)(i) If the county council enacts an ordinance establishing a licensing program authorized by paragraph (3) of this subsection, an individual or organization that decides not to seek to become licensed under the program may not stand in a roadway, median divider, or intersection in Anne Arundel County to solicit money or donations of any kind from the occupant of a vehicle.

(ii) If the county council does not choose to enact an ordinance to establish a licensing program as authorized by paragraph (3) of this subsection, the provisions of this subsection may not be construed to prohibit an individual or qualified organization from standing in a roadway, median divider, or intersection in the county to solicit money or donations from the occupant of a vehicle.

(8) If the county council enacts an ordinance establishing a licensing program authorized by paragraph (3) of this subsection, then on or before December 1 of the calendar year that occurs after the anniversary of the first 12 months of the implementation of the licensing program, the Anne Arundel County Police Department shall report in writing to the Anne Arundel County Delegation to the General Assembly on the effectiveness of the county police department's enforcement of the provisions of this subsection with respect to individuals and organizations to solicit money or donations on roadways, median dividers, or intersections in the county from the occupants of vehicles.

(f)(1) This subsection applies only to Cecil County.

(2) In this subsection, "qualified organization" means a fire company or bona fide religious, fraternal, civic, war veterans', or charitable organization.

(3) Except as provided in paragraph (4) of this subsection, in Cecil County a person may not:

- (i) Stand in a roadway, median divider, or intersection to solicit money or donations of any kind from the occupant of a vehicle; or
- (ii) Cause, encourage, allow, or petition another to stand in a roadway, median divider, or intersection to solicit money or donations of any kind from the occupant of a vehicle.
- (4)(i) The County Commissioners of Cecil County or the governing body of a municipal corporation in Cecil County may, by appropriate resolution or ordinance, enact a permit program to allow individuals who are at least 18 years old and representatives of qualified organizations who are at least 18 years old to solicit money or donations from the occupant of a vehicle by standing in a roadway, median divider, or intersection.
- (ii) If the County Commissioners or the governing body of a municipal corporation in the County enact a resolution or ordinance establishing a permit program authorized by this paragraph, the resolution or ordinance shall:
  1. Require an applicant for a permit to submit proof that the individual or qualified organization has a plan for safely soliciting money or donations from the proposed location;
  2. Provide that a permit is effective for a period of 1 calendar day; and
  3. Allow an individual or a qualified organization to obtain only one permit per calendar year.

Acts 1977, c. 14, § 2; Acts 2001, c. 585, § 1, eff. June 1, 2001; Amended by Acts 2002, c. 253, § 1, eff. Oct. 1, 2002; Acts 2003, c. 219, § 1, eff. Oct. 1, 2003; Acts 2003, c. 463, § 1, eff. Oct. 1, 2003; Acts 2004, c. 25, § 1, eff. April 13, 2004; Acts 2004, c. 125, § 1, eff. Oct. 1, 2004; Acts 2004, c. 156, § 1, eff. July 1, 2004; Acts 2005, c. 93, § 1, eff. Oct. 1, 2005; Act 2005, c. 311, § 1, eff. Oct. 1, 2005.  
Formerly Art. 66, § 11-507.

#### Historical and Statutory Notes

##### 2002 Legislation

Acts 2002, c. 253, § 1, added subsec. (d), related to Prince George's County.

##### 2003 Legislation

Acts 2003, c. 219, § 1, in subsec. (c), inserted the reference to Harford County.

Acts 2003, c. 463, § 1, in subsec. (c), inserted the reference to Washington County.

##### 2004 Legislation

Acts 2004, c. 25, § 1, made technical corrections to the Code.

Acts 2004, c. 125, § 1, in subsec. (c), included Frederick County within the scope of subsec. (c).

Acts 2004, c. 156, § 1, added subsec. (e), related to Anne Arundel County.

##### 2005 Legislation

Acts 2005, c. 93, § 1, in subsec. (c), inserted "Carroll County."

Acts 2005, c. 311, § 1, added subsec. (f), related to Cecil County.

#### Research References

##### Encyclopedias

Maryland Law Encyclopedia Autos & Motor Vehicles § 198, Pedestrians, Generally—Walking or Standing on Street or Highway.

#### § 21-508. Safety zone driving barred

#### Research References

##### Encyclopedias

Maryland Law Encyclopedia Autos & Motor Vehicles § 121, Duty to Pedestrians at Crossings or Intersections—Sidewalks or Safety Zones.

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## TRANSPORTATION

§ 21-1003

miles until forced to stop by another officer. U.S.  
v. Davis, 2003, 261 F.Supp.2d 343. Obstructing  
Justice ⇨ 7; Obstructing Justice ⇨ 16

### SUBTITLE 10—STOPPING, STANDING, AND PARKING

#### § 21-1001. Stopping, standing, or parking permitted

##### Research References

##### Encyclopedias

Maryland Law Encyclopedia Autos & Motor Ve-  
hicles § 9, Generally.

Maryland Law Encyclopedia Autos & Motor Ve-  
hicles § 15, Stopping, Standing, or Parking.

#### § 21-1003. Stopping, standing, or parking barred

- (a) The provisions of this section apply except as necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic control device.
- (b) A person may not stop, stand, or park a vehicle in front of a public driveway.
- (c) A person may not stop, stand, or park a vehicle on a sidewalk.
- (d) A person may not stop, stand, or park a vehicle in an intersection.
- (e) A person may not stop, stand, or park a vehicle on a crosswalk.
- (f) A person may not stop, stand, or park a vehicle between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless the State Highway Administration or local authority indicates a different length by signs or markings.
- (g) A person may not stop, stand, or park a vehicle alongside or opposite any highway excavation or obstruction if to do so would obstruct traffic.
- (h) A person may not stop, stand, or park a vehicle on any bridge or other elevated structure on a highway.
- (i) A person may not stop, stand, or park a vehicle in a highway tunnel.
- (j) A person may not stop, stand, or park a vehicle at any place where stopping is prohibited by an official sign.
- (k) A person may not stop, stand, or park a vehicle on any entrance or exit ramp of any highway with two or more lanes for traffic moving in the same direction.
- (l) A person may not stand or park a vehicle in front of a private driveway without the consent of the owner or occupant of the premises.
- (m) A person may not stand or park a vehicle within 15 feet of a fire hydrant.
- (n) A person may not stand or park a vehicle within 20 feet of a crosswalk at an intersection.
- (o) A person may not stand or park a vehicle within 30 feet on the approach to any flashing signal, stop sign, yield sign, or traffic control signal located at the side of a roadway.
- (p) A person may not stand or park a vehicle within 20 feet of the driveway entrance to any fire station or on the side of a highway opposite the entrance to any fire station within 75 feet of the entrance, if properly signposted.
- (q) A person may not stand or park a vehicle at any place where standing is prohibited by an official sign.
- (r) A person may not stand or park a vehicle on the roadway side of any other vehicle that is stopped or parked at the edge or curb of a highway.
- (s) A person may not stand or park a vehicle on a curve or hill where solid lines on the surface of the roadway indicate a zone in which passing is prohibited.
- (t) A person may not park a vehicle within 50 feet of the nearest rail in a railroad grade crossing.

## § 21-1003

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- (u) A person may not stop, stand, or park a vehicle unless for the use of an individual with a disability, in a space or zone marked as restricted for the use of individuals with disabilities.
  - (v) A person may not park a vehicle on any property owned by the Board of Education of Montgomery County or Montgomery College where parking is prohibited by an official sign.
  - (w) A person may not park a vehicle on any property owned by the Board of Education of Baltimore County or the community colleges of Baltimore County where parking is prohibited by an official sign.
  - (x) A person may not park a vehicle on any property owned by the Board of Education of Wicomico County or the community colleges of Wicomico County where parking is prohibited by an official sign.
  - (y) A person may not park a vehicle on any property owned by the Board of Education of Prince George's County where parking is prohibited by an official sign.
  - (z) A person may not park a vehicle on any property owned by the Board of Education of Calvert County, Charles County, or St. Mary's County or the community colleges of Calvert County, Charles County, or St. Mary's County where parking is prohibited by an official sign.
  - (aa) A person may not park a vehicle at any other place where parking is prohibited by an official sign.
  - (bb) A person may not move a vehicle that he does not lawfully control into any prohibited area.
  - (cc) A person may not move a vehicle that the person does not lawfully control away from a curb for an unlawful distance.
  - (dd) A person may not stop, stand, or park a vehicle in front of a curb ramp designed for the use of individuals with disabilities.
  - (ee) A person may not stop, stand, or park a vehicle in front of or on a passenger loading zone designed or marked for the use of individuals with disabilities.
- Acts 1977, c. 14, § 2; Acts 1977, c. 169; Acts 1984, c. 233; Acts 1985, c. 351; Acts 1986, c. 472, § 1; Acts 1989, c. 390; Acts 1993, c. 409; Acts 1996, c. 603, § 1, eff. Oct. 1, 1996. Amended by Acts 2002, c. 490, § 1, eff. Oct. 1, 2002; Acts 2004, c. 201, § 1, eff. June 1, 2004.  
Formerly Art. 66½, § 11-1003.

### Historical and Statutory Notes

#### 2002 Legislation

Acts 2002, c. 490, § 1, repealed and reenacted subsec. (u) without amendment.

#### 2004 Legislation

Acts 2004, c. 201, § 1, repealed and reenacted subsec. (j) without amendment.

### Research References

#### Encyclopedias

Maryland Law Encyclopedia Autos & Motor Vehicles § 15, Stopping, Standing, or Parking.

Maryland Law Encyclopedia Autos & Motor Vehicles § 121, Duty to Pedestrians at Crossings or Intersections—Sidewalks or Safety Zones.

## § 21-1004. Other parking rules

*Text of section effective until January 1, 2006. For text of section effective January 1, 2006, see Transportation § 21-1004, post.*

- (a) Except as otherwise provided in this section, a vehicle that is stopped or parked on a two-way roadway shall be stopped or parked parallel to the right hand curb or edge of the roadway, with its right hand wheels within 12 inches of that curb or edge of the roadway.
- (b) Except as otherwise provided by local ordinance, a vehicle that is stopped or parked on a one-way roadway shall be stopped or parked parallel to the curb or edge of the roadway, in the direction of authorized traffic movement, with:
  - (1) Its right hand wheels within 12 inches of the right hand curb or edge of the roadway; or
  - (2) Its left hand wheels within 12 inches of the left hand curb or edge of the roadway.

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